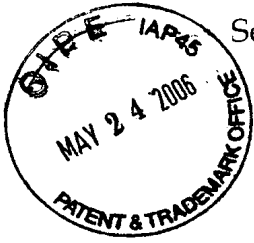


IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



Applicants: Loren ECKART et al.
Serial Number: 10/830,115
Filed: 23-Apr-2004
Title: *AUTOMATED BUSINESS
FINANCIAL ANALYSIS AND
REPORTING*
Art Unit: 3623
Confirmation No.: 9016
Examiner: M. Tarae
Customer No.: 21967
Attorney Docket No.: 59683.000002

DECLARATION
UNDER
37 C.F.R. § 1.132

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Madam:

In reply to the Office Action dated February 9, 2006, and further to the Amendment and Request for Continued Examination filed concurrently herewith, please consider the following statements.

I, Loren Eckart, being over eighteen years of age, declare and state the following:

I. BACKGROUND

1. My name is Loren Eckart. I am the co-founder and current Chief Operating Officer (COO) of iLumen, Incorporated ("iLumen"). My business address is 1375 Spring Street, Atlanta, GA 30309.

2. iLumen is the owner of the above-referenced United States patent application serial number 10/830,115 ("the '115 application"), entitled "Automated Business Financial Analysis and Reporting," which was filed on April 23, 2004 claiming priority to provisional patent application number 60/535,801 (the '801 application) filed on January 13, 2004 and bearing the same title.

3. iLumen is based in Atlanta, GA. It is the leading provider of bundled private company financial information network solutions specific to financial monitoring and benchmarking services. iLumen's current clientele includes banking/financial institutions, certified public accounting (CPA) firms, industry associations and their respective portfolios of private company clients. Several implementations of iLumen's iMonitor system are currently in place in the United States and several thousands of companies are submitting their financial performance information on iLumen's iMonitor network. Several thousand bankers, CPAs, and other analysts are monitoring and analyzing their clients on the iLumen Financial Information Network.

II. IDENTIFYING THE PROBLEM TO BE SOLVED BY THE INVENTION AND DEVISING A SOLUTION

4. I founded iLumen in May of 2000 with co-founder Robert H. Woosley. I currently serve as the company's Chief Operating Officer (COO) and Bob is our Chief Executive Officer (CEO). The company was an outgrowth of an Atlanta-based CPA and Business Consulting firm that specialized in financial analysis and financial adversary services for small to mid-sized companies. During this time, we recognized a fundamental problem in this market: delivering continuous value and business analysis to a portfolio of client customers is inefficient because the customer's financial data is difficult to acquire, difficult to analyze, and difficult to benchmark for private companies. This long-felt need was not being addressed in the market place.

5. As an inventor of the '801 application, I am very familiar with the application's specification and its current claims. I have read the February 9, 2006 Office Action (Final Rejection) and the primary prior art reference relied upon to reject the claims of the '801 application, that is, U. S. Patent No. 6,850,643 to Smith, II *et al.* ("the '643 patent"). I observe several significant differences

between the claims of the '801 patent application as currently amended and the system described in the '643 patent.

6. Prior to the creation of iLumen's iMonitor system, the banking, accounting and financial reporting industries were dependent largely upon manual techniques to collect and maintain financial performance information on their clients/customers. These manual techniques included third party reporting by entities such as Moody's and Dun & Bradstreet ("D&B"), and self reporting by either interview or periodic filing of paper based financial reports. Institutions receiving and maintaining this information would have to manually re-key this information into their own computerized financial systems so that they could track this information. This required great effort on the part of these institutions to maintain these systems and to insure they were updated with businesses' current performance information. Because information received from customers/clients is often in widely divergent formats, great effort was required to input data and often comparisons were impossible due to incomplete and/or inconsistent data submissions across the institution's portfolio. Data entry errors further exacerbated this problem. The inventors of the '643 patent overcame some of these difficulties for the Banking/Commercial lending market as they existed in the narrow, related sub-field of collateral loan risk monitoring. As a result, they devised a system that would receive electronic submission of various detailed financial reports specific to collateral loans, which, once received, could be converted through an automated process that extracts exhibit information. Exhibit information, according to the '643 patent, is summaries of daily transaction detail for a sub-set of financial items such as Accounts Receivable or Inventory that a client records. Thus, the inventors of the '643 patent recognized that by performing electronic data submission, errors associated with human data entry could be reduced and/or eliminated. The overall collateral loan risk

monitoring process could thus be sped up to potentially detect problems before they are irreversible.

7. At iLumen, we recognized that banks that provide all types of commercial loans are constantly trying to reduce costs due to bad debt and to enhance their profitability, and that a broader market of CPA firms, banks, industry associations and other financial analysts existed that desired to continue to expand their service offerings in order to retain existing customers and attract new ones. Therefore the demand for “better” financial analysis and reporting systems has been ever increasing. To address the demand for such systems and building on ability of the Internet and automated processing techniques to increase efficiency and accuracy, iLumen developed a bundled industry-standard solution for banks, CPA firms, industry associations, and others and their respective private company customers. With the iMonitor system, a single financial report, the trial balance, is generated by any commercial off-the-shelf (COTS) general ledger accounting system and is electronically submitted to iLumen. This single report contains higher-level financial reporting information that spans across all profit & loss, balance sheet, cash flow, and common financial ratios for a given business. In turn, that data is converted to a standardized format. The standardized data can then be aggregated and used to perform various financial metric-based performance analyses, as well as reporting and industry peer-group benchmarking. iLumen is believed to be the first company to offer such a solution for all private companies and the advisors that serve them.

8. According to the Patent Office assignment database, the ‘643 patent is assigned to GE Capital Commercial Finance (GECCF). GECCF provides capital equipment/inventory financing to companies (collateral based loans). The system disclosed in the ‘643 patent purports to facilitate the narrower task of monitoring risk to collateral as evidenced by inventory and A/R, A/P financial

statements. Yet, the system disclosed in the '643 patent fails to employ key features of the invention described in the current claims of the '115 application. For example, unlike the system of the '643 patent, iLumen's iMonitor system accepts electronic data submissions in the form of a trial balance. This is a significant distinction. The trial balance includes a complete reconciliation of all of the submitting business' financial accounts. A trial balance simplifies the data conversion process because the system of the '115 application "knows" at least the contents of the data despite not knowing the type of native accounting system in which the report was generated. Therefore, the iLumen system works for all companies in the market, regardless of what accounting system they use. The system of the '643 patent by contrast requires first determining the type of report as well as the contents. Also, the iMonitor system focuses on industry standardized, metric-based, financial performance reporting and analysis. By contrast, the system of the '643 patent focuses only on reporting specific to the monitoring of collateral — analysis that may have little or no value or correlation to the task of evaluating business performance.

Financial analysis techniques are well known and widely employed in the public sector. For public companies, the availability of consistent, quality source data is not an obstacle — in fact, it is required by law and/or Security and Exchange Commission (SEC) regulation. However, private companies are typically only obligated to maintain records necessary to permit accurate accounting of revenue, profit and expenses for tax payment purposes. This information is maintained internally, often in widely divergent formats from company to company, and typically is only shared with the companies' trusted advisors within their Bank or CPA firm. Thus, without complete, accurate and standardized data, the financial analysis techniques utilized with public company data can not be applied to private company information. Furthermore, private companies are unable to measure their performance against that of their

peers. iLumen's iMonitor system focuses on receiving electronic data input in a consistent format across all private company submitters — that is, the trial balance report — on converting the data to a standardized format, on performing industry standard financial analyses using metric-based analysis techniques comporting with generally accepted accounting principles (GAAPs), on generating interactive analysis results for both the submitter and receiving company (bank, CPA, etc) and aggregating the data with standardized data from other private companies for industry benchmarking and other trend analysis purposes.

Because the system of the '643 patent is limited to effective collateral risk monitoring it does not contemplate standardized, industry accepted financial reporting. Rather, it performs customized risk analysis or uses a COTS risk analysis and reporting program to specifically assess collateral risk for the receiving bank. Further evidence of this is the lack of ability to benchmark the financial metric analysis performed on one submitter's data against standardized, aggregate metric data of other submitters in the institution's portfolio. The '643 patent merely discusses the ability to compare a company's exhibit data against "...historical data or other industry data." Notably, the system in the '643 patent does not create an aggregate database of standardized data that can be leveraged to provide enhanced and complete financial analysis on a given company relative to other companies in the portfolio.

9. Still another feature of the automated iMonitor system that differs from the system described in the '643 patent is the user's ability to receive alerts that are generated automatically when the results of analysis indicates that the value of a particular metric exceeds an adjustable threshold variance level set by the user. By setting an adjustable threshold, the viewer of the data (i.e., the bank, CPA firm or even the submitting business) can, depending upon their own variance tolerance, set limits that trigger alert messages. This type of

customization allows for personalized variance tolerance adjustment — a feature not present in the system of the '643 patent.

10. Yet another significant distinction between the iMonitor system and the system of the '643 patent are the benefits provided to the submitting business. Lending institutions have an obvious reason for wanting to have regular and accurate data updates from their borrowers, as evidenced by the '643 patent — that is to reduce their exposure to risk. However, both banks and CPA firms, while also monitoring their clients' financial "health", want to provide value added services to their customers and to attract new customers. By providing an interactive analysis dashboard that shows various metric based performance analyses including data and visualization and at least one historical trend for one of the performance metrics, submitters are able to visualize their own performance, perform trending analyses and benchmark their performance against other peer business. Banks and CPA firms that have subscribed to the iMonitor system view access to the standardized, aggregated data, alerts and reporting provided by the iMonitor system as instrumental in their efforts to offer value added services to their customers and to attract new customers. In addition, the submitting companies themselves recognize the value of having access to standardized, aggregated industry data, along with the analysis, alerts and reports generated by the iMonitor system. Because of the value the iMonitor system provides directly to the submitting company, we have discovered in practice that submitters often submit their data more frequently than required by lenders and even submit older data from past accounting periods so that they can perform quarter-over-quarter and year-over-year trending analyses. This unexpected result is neither contemplated nor possible in the system of the '643 patent. The highly useful visualization and trend analysis tools provided by the interactive dashboard interface incents submitter interaction with the system. The system of the '643 patent does not address these benefits because it only

addresses acquiring data related to monitoring collateral loan covenant compliance, that is, the requirement that the borrower periodically submit financial data to the bank relating to the goods or other collateral securing the loan, and not the complete data set gathered by the iMonitor system in the form of a trial balance report.

III. COMMERCIAL SUCCESS

11. In reviewing the February 9, 2006 Office Action, I have observed that at least some of the claims of the '115 application have been rejected under 35 U.S.C. § 103(a) as allegedly being obvious over the '643 patent. It is my belief that each of the independent claims are now presented in a form including features that were rejected only on the basis of obviousness with respect to the alleged prior art as well as in at least some of the independent claims, features that were not previously claimed. Thus, the anticipatory rejections under 35 U.S.C. § 102(e) should be moot.

I am informed that commercial success is a secondary consideration of the non-obviousness of a claimed invention. The invention described in the claims of the '115 patent has enjoyed much commercial success since it was first marketed in 2003 and continues to enjoy ever increasing industry interest and acceptance today throughout all target market segments. Currently there are approximately 32,600 periods of financial data in the iMonitor system corresponding to performance information for over 20,000 different companies. There are over 10,000 companies with data in the aggregate repository for industry specific benchmarking. The number of contributing companies has been increasing at rate of 150% per year.

12. iLumen's iMonitor financial information network, which, is designed in accordance with the claims of the '115 application, is unique in the marketplace. Banks, accounting firms, industry associations, and other financial

advisory firms have been partnering with iLumen to implement the iMonitor system under their own branded web portals as a value added service to their respective clients/customers/members. To be sure, banks and CPA firms already have large volumes of financial performance information on their clients/customers that resides in various formats on their respective legacy data management and credit monitoring systems. By migrating their information to the iMonitor network, they are able to standardize the data across their portfolio and perform traditional financial metric-based analyses. Also, subsequent information updates are made significantly easier. By using the iMonitor system to obtain trial balance reports electronically and then map the data to a standard chart of accounts, the data received from each submitting business is consistent, and also standardized. This enables apples-to-apples comparisons between similarly situated businesses and allows banks and CPA firms to have the most complete and accurate picture of the financial status of their customers/clients. Thus, the iMonitor system also enables submitting businesses to perform comparisons and trending analyses of their own data relative to other similarly situated businesses in a way that was not previously available to them. This feature has proven to be particularly valuable to submitter businesses. The submitting business has the option to subscribe to this industry benchmarking service on an annual basis.

13. Attached as Exhibits 1-6 are examples of iLumen customers' marketing materials describing the iMonitor network under a variety of different brand names, evidencing the commercial success of the financial analysis and reporting system according to the claimed invention. Exhibit 1 includes material describing the implementation of the iMonitor system by Wachovia Bank, NA ("Wachovia"). Wachovia is based in Charlotte, North Carolina and is the fourth largest bank in the United States. Wachovia has branded their iMonitor implementation "Wachovia Financials Direct." Wachovia first evaluated the

iMonitor system in July of 2003 as a pilot for their loan customers to gather, analyze and benchmark their financial performance data. The data was used to monitor growth or decline in key financial metrics, to evaluate trends and make benchmarking comparisons, as well as to provide alerts to corporate banking customers as to the financial condition of their business. In iLumen's Insight newsletter included in Exhibit A, Wachovia Vice President Jay Mendicino is quoted as saying, **"The iMonitor network offers a framework to enable our relationship managers to better understand the evolving financial challenges of our business customers... iMonitor's standardized architecture for gathering, analyzing and exporting financial information is an efficient and effective solution that has potential to become a standard in the banking industry."** After the pilot program, Wachovia implemented the iMonitor system as an integral part of its eCommerce services for its commercial bank. Wachovia has rolled out the iMonitor service to several portfolios to establish initial adoption, and is now on a path to roll it out to the bank's entire commercial portfolio of lending customers over time.

14. Exhibit 2 includes documentation on another customer/licensee of the iMonitor technology, RSM McGladrey, Inc. (RSM), a leading national business consulting, accounting and tax firm, based out of Bloomington, MN. RSM has 138 offices in the United States. RSM implemented iMonitor in 2003 as a beta version and then extended it to their network the following year as the "Business Connection" financial data upload system. Tom Rotherman, president and CEO of RSM McGladrey is quoted in the March 2003 press release as saying, **"The iMonitor network provides a valuable service for our clients and we believe RSM McGladrey is well positioned to leverage this technology to bring us in closer touch with business... Deployment of iMonitor sends a strong signal to our clients, the accounting profession and the banking**

industry that RSM McGladrey will continue to be an innovator in providing leading edge services to our clients."

Exhibit 2 also includes documentation on the RSM McGladrey Network's (RSM Network) adoption of iMonitor in March 2005. The RSM Network is an association of CPA Firms that are affiliated under the RSM banner. RSM has made the Business Connection service available to the RSM Network members. As part of their monthly closeout, client companies upload the month's trial balance to their participating RSM Network affiliate's web site. In a single step, their financial advisor is provided with updated information at his or her desktop and clients can view their financial trends and ratios on their own desktop. The RSM Network firms also offer industry benchmarking through the Business Connection service using the iMonitor network as an additional service to its customers. In the March 2005 press release, Dan Brooks, Executive Director of the RSM Network is quoted as saying, **"RSM McGladrey's Business Connection has given our firm a competitive advantage and there is a growing demand for this service from RSM McGladrey Network member firms... iLumen solves the challenges of collecting and analyzing interim financial data for the accountant. It also provides the added benefit of giving clients access to the same high level of analysis and detailed financial reports."**

15. Exhibit 3 describes West Hartford, CT based CPA and business advisor firm Filomeno & Company's (F&C) implementation of the iMonitor system. Branded as "Business Insight," F&C provides the iMonitor system to its customers to provide them an easier and more secure way of delivering financial information and allows clients to see how their company is changing and growing versus continually updated financial trends.

16. Exhibits 4 and 5 include marketing materials for Memphis, TN and Las Vegas, NV based CPA firms Work & Greer and Stewart, Archibald, & Barney, respectively. Both of these firms have partnered with iLumen to build

iMonitor-based systems for introduction to their clients under the brand name "Business InTouch Financial Communication Service" for obtaining, analyzing, reporting and benchmarking financial performance data.

17. Exhibit 6 includes another iLumen newsletter that details a 2004 partnership between iLumen and Moody's KMV, a subsidiary of the leading financial information reporting and bond rating company, Moody's Corporation. Through this relationship, iLumen provides the iMonitor technology for acquiring, standardizing and communicating electronically-enabled financial accounting data directly into Moody's KMV Financial Analyst (MFA) software. MFA is a widely used analysis and modeling tool employed by banks and financial institutions for portfolio management, commercial lending, and other credit decision functions. As quoted in the newsletter, Moody's KMV CFO and co-head of Project Management, Arnie Noe, stated, **"The integration of iMonitor with Moody's KMV suite of data collection and credit analysis tools represents a powerful offering to our customers... This relationship answers a critical need for lending institutions to enhance their connection to business customers while managing their credit risk."**

IV. NEXUS BETWEEN CLAIMED INVENTION AND COMMERCIAL SUCCESS

18. I am further informed that there must be a so-called "nexus" between the claimed invention and the commercial success. For commercial success of a product embodying a claimed invention to have true relevance to the issue of non-obviousness, I am informed and aware that the success must be shown to have been due to the nature of the claimed invention, as opposed to other economic and commercial factors unrelated to the technical quality of the subject matter for which patent protection is sought. Thus, I am informed and aware that a nexus is required between the merits of the claimed invention and

the evidence offered, if that evidence is to be given substantial weight en route to a conclusion of the obviousness issue.

A nexus certainly exists here. As noted previously, private company financial information suffers from a lack of availability, accuracy and standardization. The '643 patent, for example, provides a system that accepts electronic reports from native submitter general ledger accounting systems. However, the system of the '643 patent is limited to monitoring collateral detail, provides little or no benefits to the submitter business, fails to provide robust, industry standardized, financial metric-based analysis and reporting and does not provide for benchmarking against other submitter data. It is these value added features of the iMonitor system that makes it non-obvious and particularly attractive to CPA firms, large lending institutions and industry associations, as well as to their clients. iMonitor standardizes large data volumes and provides attractive benefits to our customers' clients that incent them to participate. iMonitor utilizes automated analysis techniques which require little or no human assistance. Not only has the system been beneficial to institutions receiving the data, it has also benefited the submitters. This is evidenced by the fact that submitting companies typically submit data more frequently than required, along with older data from past accounting periods so that they can perform trending and analysis of their historical data through the dashboard interface. Also, these businesses recognize the value provided by the system such that they are willing to pay to receive benchmarking services. Some iLumen customers/licensees are selling the benchmarking services to their clients because they believe that such a service, when based on accurate and relevant data, is highly valuable to their customers and has previously been unavailable. This makes the system even more attractive to customers/licensees because it increases submitter compliance through incentives and generates revenue. By contrast, the system of the '643 patent is merely concerned with

collateral loan covenant compliance and managing risk from the loan holder's perspective not with providing any value added services to submitter companies and, thus, is unable to produce these benefits.

19. It is also noteworthy to mention that iLumen has invested almost no capital on conventional print, radio, television or even Internet-based advertising. Thus, it is believed that the success that has been enjoyed by iLumen in selling and licensing the iMonitor system can be attributed solely to the features of the system embodied in the current amended claims. Virtually every customer/licensee of the iMonitor technology embodied in the claims of the '115 application has first tried the system out in a pilot-type implementation. After realizing the benefits of the automated system to both the receiver and submitter, including (i) ease of data entry and update, (ii) the level of consistency and detail of financial analysis that can be performed, (iii) the metric-based benchmarking capabilities due to aggregation and standardization, (iv) the customizable dashboard interface for both submitter and receiver business, (v) the ability to set adjustable thresholds that automatically trigger alerts depending on the user's selected variance tolerance for the particular metric, and (vi) the potential to generate additional revenue with the system through the sale of access to benchmarking services, these companies have made commitments to incorporate the iMonitor system as standard operating procedure for servicing their portfolio of clients. Every CPA or banking institution (some of which are detailed in Exhibits 2-6) that has conducted a structured pilot of the iMonitor system has ultimately purchased/licensed the technology.

20. The undersigned declares further that all statements herein of his are true and all statements made on information and belief are believed to be true and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both under § 1001 of Title 18 of the United States Code.

Dated: 5/23/06

By:  

Loren Eckart